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IN THE

Supreme Court

of the

United States

OCTOBER TERM 1954

NO. [redacted] 99

EARNEST T. BUDBERG, ET AL.,
Appellants,

V.

COUNTY OF SANGAMON, ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ILLINOIS

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

The opinion of the Supreme Court of Illinois in this case is reported as Budberg v. County of Sangamon, 4 Ill. 2d. 518.

This is an appeal from the final judgment of the Supreme Court of Illinois reversing a decree of the Circuit

Court of Sangamon County which enjoined the taxing officials of that county from collecting more than 50% of the 1953 property taxes assessed against 180 taxpayers. The appeal is pursuant to 28 USC Sec. 1257 (2).

The opinion of the Supreme Court of Illinois was filed November 18, 1954, and became its final judgment on January 18, 1955, upon the denial of a Petition for Rehearing. Notice of appeal was filed in the office of the Clerk of the Supreme Court of Illinois on April 1, 1955.

The material provisions of 28 USC Sec. 1257 (2) which we believe confer jurisdiction on this Court are as follows:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution; treaties or law of the United States, and the decision is in favor of its validity.

The following cases sustain the jurisdiction of this Court:

People of the State of Illinois *ex rel.* McCollum v. Board of Education, 333 U. S. 203, 92 L. Ed. 649.

Hamilton v. University of California, 293 U. S. 245, 258, 79 L. Ed. 343.

Fiske v. Kansas, 274 U. S. 380, 71 L. Ed. 1108.

Cumberland Coal Co. v. Board of Review, 284 U. S. 23, 76 L. Ed. 146.

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Lovell v. City of Griffin, 303 U. S. 444, 82 L. Ed. 949.

Chicago B. & Q. R. Co. v. Illinois *ex rel* Grimwood, 200 U. S. 561, 50 L. Ed. 596.

Mallinickrodt Chemical Works v. Missouri *ex rel* Jones, 238 U. S. 41, 59 L. Ed. 1192.

Hanover Fire Ins. Co. v. Carr, 272 U. S. 494, 71 L. Ed. 372.

The Supreme Court of Illinois construed section 108 of the Revenue Act (Illinois Revised Statutes 1953, Chap. 120, par. 589, sub-par. (5)) to authorize the Board of Review to assess the value of appellants' real property 100% higher than the assessed valuation of similar property in the same taxing district, although the Complaint alleged such disproportionate valuation was repugnant to the Fourteenth Amendment to the Constitution of the United States. The Illinois statute relied upon by the Supreme Court is set forth in its opinion in the following manner:

> "The board of appeals is authorized by section 108 of the Revenue Act (Ill. Rev. Stats. 1953, chap. 120, par. 589,) to: '(5) Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein if, in its opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reducing the amount thereof, in any township, or part thereof, or any portion of the county as may, in its opinion, be just, but the assessment of any class of property or of any township or part thereof, or any portion of the county, shall not be increased until the board shall have notified not less than fifty of the owners of such property in such township, or part thereof, or portion of the county of such proposed increase and give them, or

any one representing them or other citizens of said territory, an opportunity to be heard.' (Rec. p. 14).

The question presented by this appeal is the validity of the following statute of the State of Illinois, Paragraph 5 of Section 108 of the Revenue Act of Illinois, (Ill. Rev. Stat. 1953, Chap. 120, Par. 589 (5)), construed by the Supreme Court of Illinois, to authorize disproportionate assessments of real property valuations for tax purposes, against the claim that such disproportionate valuations of similar property are repugnant to the Fourteenth Amendment to the Constitution of the United States.

The complaint and amendment thereto allege that the Board of Review of Sangamon County, Illinois, on October 23, 1951, increased the assessed valuation placed on plaintiffs' real estate 100% over the valuation placed thereon by the Township Assessor; that the assessed valuation placed on plaintiffs' property by said Board of Review is disproportionate to the assessed valuation of other real estate in Woodside Township, Sangamon County, Illinois; that said valuation is 100% greater than the valuation placed on similar property of other persons in said Township (Rec. p. 3, abst. p. 30) and that the increased valuations only affected approximately 400 property owners although approximately 4000 persons own real estate in said Township. These facts were admitted by the pleadings, as the defendants stood on their motion to dismiss the complaint after the trial court held that the action of the Board of Review violated the Fourteenth Amendment to the Constitution of the United States, and Article II, Section 2 of the Constitution of the State of Illinois.

The trial court enjoined the collection of 50% of the real property tax assessed against plaintiffs in 1953, that being the portion of such tax resulting from the action of the Board of Review.

The complaint alleged that the action of the Board of Review violated the Fourteenth Amendment to the Constitution of the United States. (Rec. p. 3, abst. of Rec. p. 10.)

Defendants filed a Motion to Dismiss which merely asserted, with reference to this allegation, that the facts alleged in the complaint did not support the legal conclusions stated. (Rec. p. 3, abst. p. 28.)

The decree of the trial court, par. 12 thereof, is as follows:

> "12. That the action of the Board of Review on October 23, 1951, whereby it increased the valuation placed upon Plaintiffs' property by 100 per cent, is illegal and void because it violates Article IX, Sec. 1 of the Constitution of Illinois and would compel Plaintiffs to pay a greater portion of taxes according to the value of their property than other persons in the same taxing district, Woodside Township; and that said action violates the Fourteenth Amendment to the Constitution of the United States and Article II, Section 2 of the Constitution of the State of Illinois, since it constitutes an intentional and arbitrary discrimination against Plaintiffs and other lease-holders in Woodside Township, thereby depriving them of their property without due process of law and is violative of their constitutional right to the equal protection of the law." (Rec. p. 3, abst. p. 40).

Appellants here, on page 10, Point I, (Rec. p. 7) of their brief in the Supreme Court of Illinois, cited authorities in support of their contention that the action of the Board of Review violated the constitutional requirements of equality and uniformity in taxation. Page 27, concludes with the statement that fifty per cent of the taxes assessed against them, payable in 1954, *are illegal and unauthorized.*

In its opinion the Supreme Court of Illinois stated:

"Plaintiffs' basic contention is that the action of the board of review in increasing the valuations of all lake leasehold property in the township was void. It is first asserted the motion to dismiss admits the allegation that the property of plaintiffs and other lake leaseholders was originally assessed by the township assessor upon an equal and uniform basis with other property in the township. Since there are 4000 owners of real property in Woodside Township, only 400 of whom are lake leaseholders, it is said that there could have been no basis or justification for any increase by the board of appeals in the valuation of plaintiffs' property, and that the increased valuation fixed by the board makes the assessment of their property disproportionate to the assessment of other property and deprives them of due process and of equal protection of the law.

"The board of appeals is authorized by section 108 of the Revenue Act (Ill. Rev. Stat. 1953, chap. 120, par. 589,) to: '(5) Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein if, in its opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reducing the amount thereof, in any township, or part thereof, or any portion of the county as may, in its opinion, be just, but the assessment of any class of property or of any township or part thereof, or any portion of the county, shall not be increased until the board shall have notified not less than fifty of the owners of such property in such township, or part thereof, or portion of the county of such proposed increase and given them, or any one representing them or other citizens of said territory, an opportunity to be heard.' It appears from the complaint and the attached exhibits that the required notices were given, and that a hearing was had before the board. From the minutes of the hearing it appears that the board considered that the lake leasehold properties and the improvements thereon 'were not assessed on any basis comparable with any other property in the City (of Springfield) or County.'

"In our opinion the contention of the plaintiffs cannot be sustained." (Rec. p. 13, 14.)

The opinion refers to the statute as authorizing the board of "appeals" to perform the acts therein enumerated. This is in error, since the statute applies to the board of review. There is no board of appeals in Sangamon County, so that when the opinion mentions the board of "appeals" the court is referring to the board of review.

The petition for rehearing pointed out that the opinion overlooks the fact that the tax imposed upon the plaintiffs real property is 100% greater than that imposed upon similar property of other taxpayers in the same taxing district. As a result of overlooking this fact it misapprehended the principles of law applicable when the uniformity requirements of the Constitution have been disregarded in tax matters. The discussion of those principles and the authorities cited in our brief were overlooked or disregarded. (Rec. p. 18.)

On page 20 of the petition for rehearing we stated:

"We also alleged in the complaint, and the trial court found in its decree, that the action of the board resulting in plaintiffs being assessed a greater proportion of taxes according to the value of their property than other persons in the same taxing district, violates the Fourteenth Amendment to the Constitution of the United States, since it deprives them of due process and of equal protection of the law. (abst. 10, 40)."

We were permitted to file additional authority in support of our petition for rehearing, and in suggestions addressed to the Court in support of our motion to do so, stated:

"In this case, it is admitted that the tax imposed is based upon an assessed valuation made *without authority of law*. The opinion infers that section 108 of the Revenue Act. (Ill. Rev. Stat. 1953, Chap. 120, par. 589, sub-par. (5)) authorizes the Board of Re-

view to disregard constitutional limitations. To construe and apply the statute so as to have such an effect, invalidates the statute, since it thereby becomes repugnant to the provisions of our State and Federal Constitutions.

"We do not challenge the legal organization of the Board of Review, nor its authority to revised assessed valuation of property for tax purposes, *but we do challenge its authority to impose the tax involved in this proceeding.*

"The defendant members of the Board of Review admit that the tax involved in this case is only the amount imposed by them on plaintiffs in excess of the tax imposed on other taxpayers similarly situated. It should be obvious that this tax *cannot be authorized by law.* No power exists which can lawfully authorize the imposition of such a tax.

"Therefore, the decree of the trial court is correct and should be affirmed." (Rec. pp. 22, 23.)

The petition for rehearing was denied on January 18, 1955.

This Court recently decided the case of People of the State of Illinois ex rel McCollum v. Board of Education, 333 U. S. 203, 92 L. Ed. 649, 68 S. Ct. 461, 2 A.L.R. 1338, upon appeal from the Supreme Court of Illinois. That case involved an arrangement between a board of education and an association of churches for "released time" for giving of religious instruction in the public schools during school hours. Such an arrangement was not expressly authorized by statute. Nevertheless, the Supreme Court of Illinois sustained the validity of the arrangement on the ground that state statutes authorized it.

In this case appellants challenged the action of the Board of Review in placing a valuation upon their real property 100% higher than that placed upon similar property of other taxpayers in the township. The Supreme

Court of Illinois stated that section 108 of the Revenue Act authorized the Board to do so.

In the McCollum case the appellee in support of its motion to dismiss contended that the judgment of the State Supreme Court did not draw in question the "validity of a statute of any State." In response thereto this court at p. 206 of its opinion stated:

> "This contention rests on the admitted fact that the challenged program of religious instruction was not expressly authorized by statute. But the State Supreme Court has sustained the validity of the program on the ground that the Illinois statutes granted the board authority to establish such a program. This holding is sufficient to show that the validity of an Illinois statute was drawn in question with the meaning of 28 USCA Sec. 344 (a), 8 FCA title 28, Sec. 344 (a). Hamilton v. University of California, 293 U. S. 245, 258, 79 L. Ed. 343, 350, 55 S. Ct. 197."

The validity of the Illinois statute, involved in this case, was drawn in question when the Supreme Court of that State sustained the action of the Board on the ground that it was authorized by statute.

A decision of a state court applying and enforcing a state statute to a particular transaction as to which there was a distinct and timely insistence that if so applied the statute was void as in violation of the Federal Constitution, necessarily affirms the validity of the statute as so enacted, against the charge that it is repugnant to the Constitution. (Fiske v. Kansas, 274 U. S. 380, 71 L. Ed. 1108.)

Prior to the opinion of the Supreme Court of Illinois in this case, there was no occasion to question the validity of the statute since it had never been construed to authorize the board of review to disregard constitutional limitations. Under similar circumstances this court has re-

peatedly and consistently held that the presentation, by a petition for rehearing or reargument in the highest court of a state, that a constitutional right has been violated, will, where such contention was considered and overruled by the state court, give the Supreme Court of the United States jurisdiction to review the judgment of the state court. (Cumberland Coal Co. v. Board of Review, 284 U. S. 23, 76 L. Ed. 146; Brinkerhoff-Faris Trust and Savings Co. v. Hill, 281 U. S. 673, 74 L. Ed. 1107; Fleming v. Fleming, 264 U. S. 29, 68 L. Ed. 547; Sullivan v. Texas, 207 U. S. 416, 52 L. Ed. 274; Leigh v. Green, 193 U. S. 79, 48 L. Ed. 623.)

Furthermore, whether a Federal question was adequately presented and decided in a state court is itself a Federal question. (Lovell v. City of Griffin, 303 U. S. 444, 82 L. Ed. 949.)

The federal question is substantial because if it had not been determined adversely to the finding of the trial court, or evaded by the Supreme Court of Illinois, there would have been no occasion for that court to consider any other question. If the action of the board violates the federal constitution, the judgment of the trial court must be sustained, and that of the Supreme Court of Illinois reversed.

In the case of Chicago B. & Q. R. Co. vs. Illinois *ex rel* Grimwood, 200 U. S. 561, 50 L. Ed. 596, this court, in reviewing an opinion of the Supreme Court of Illinois, stated that a state court cannot, by resting its judgment upon some ground of local or general law, defeat the appellate jurisdiction of the Supreme Court of the United States, if a Federal right or immunity was specially set up or claimed which, *if recognized and enforced, would require a different judgment.*

Although the opinion in this case does not discuss or directly pass upon the State or Federal constitutional questions presented in the record, it does recognize that "Plaintiffs' basic contention is that the action of the board of review in increasing the valuations of all lake leasehold property in the township was void," and "deprives them of due process and of equal protection of the law." (Rec. p. 13). Therefore, a federal question was sufficiently raised and specifically dealt with and ruled against appellants. (Mallinckrodt Chemical Works v. Missouri *ex rel* Jones, 238 U. S. 41, 59 L. Ed. 1192.)

In Hanover Fire Ins. Co. v. Carr, 272 U. S. 494, 71 L. Ed. 372, this court reversed the Supreme Court of Illinois on the ground that its construction of section 30 of the Revenue Act of Illinois violated the equal protection clause of the 14th Amendment. It is our contention in this case, that the construction placed by that court upon sub-par. (5) of section 108 of the same act also violates the same provision of the Federal Constitution. Commencing on p. 509 of the opinion, this court stated:

> "It is insisted that we must accept the construction of section 30 by the state supreme court and as the tax levied is sustained by its construction and has been held by the court to be an indispensable condition upon which the petitioner may continue to do business in Illinois, this court is bound by both those conclusions.
>
> "It is true that the interpretation put upon such a tax law of a State by its Supreme Court is binding upon this Court as to its meaning, but it is not true that this Court in accepting the meaning thus given may not exercise its independent judgment in determining whether with the meaning given, its effect would not involve a violation of the Federal Constitution. As said by this court in St. Louis Southwestern R. Co. v. Arkansas, 235 U. S. 350, at page 362, 59 L. Ed. 265, 271, 35 Sup. Ct. Rep. 99, where the ques-

tion was whether a tax law violated the equal protection clause of the 14th Amendment:

'Upon the mere question of construction we are, of course, concluded by the decision of the State Court of last resort. But when the question is whether a tax imposed by a State deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the State Court. We must regard the substance rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the State.' "

If the construction placed upon this paragraph of the State revenue act by the Supreme Court of Illinois, is not violative of the 14th Amendment to the Federal Constitution, then taxing authorities in that State may arbitrarily select any group of persons owning real property within their jurisdiction, and place a valuation thereon for tax purposes much higher than that placed upon similar property in the same taxing district.

CONCLUSION

It is obvious that a statute of the State of Illinois has been drawn into question on the ground of repugnancy to the Constitution of the United States as required under the provisions of Title 28 Sec. 1257 (2), and that a substantial federal question is here involved.

Respectfully submitted,

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APPENDIX

Opinion—Supreme Court of Illinois

Docket No. 33197—Agenda 39—May, 1954.

Ernest T. Budberg *et al.*, Appellees, v. The County of Sangamon *et al.*, Appellants.

MR. JUSTICE SCHAEFER delivered the opinion of the court:

Plaintiffs are the owners of leasehold interests in lands which border on Lake Springfield in Sangamon County. By this action they sought to enjoin the county and certain of its tax assessing and collection officials from collecting fifty per cent of their real estate taxes for the year 1953. Defendants' motion to dismiss the complaint was denied, and when they elected to stand by their motion, a decree was entered granting the relief sought. Defendants appeal.

The complaint alleges that in 1951 the township assessor for Woodside Township made the quadrennial assessment of all real estate located in the township, "and assessed the value of plaintiffs' respective properties upon an equal and uniform basis with that of other property owners in said Township." It further alleges that thereafter in 1951 the board of review of Sangamon County "arbitrarily increased the valuation fixed by the duly elected and qualified tax assessor upon plaintiffs' property, and that of all other lake leaseholders living in Woodside Township, by 100 per cent," but did not increase the assessed value of other property in the township. It appears from exhibits attached to the complaint that the land of the plaintiffs, and other land bordering on Lake Springfield, is owned by the city of Springfield, and leased for occupancy on long term leases.

Because numerous decisions of this court have discussed the propriety of the exercise of equity jurisdiction to enjoin the collection of taxes, we turn at once to a consideration of the principles which those decisions have established. It is settled that equity will not interfere to enjoin the collection of a tax unless the tax is laid upon exempt property, or is not authorized by law, (*Owens-Illinois Glass Co.* v. *McKibbin*, 385 Ill. 245; *Goodyear Tire and Rubber Co.* v. *Tierney*, 411 Ill. 421,) or is levied upon a fraudulently excessive valuation. (*Porter* v. *Rockford, Rock Island and St. Louis Railroad Co.*, 76 Ill. 561; *Bistor* v. *McDonough*, 348 Ill. 624; *Ames* v. *Schlaeger*, 386 Ill. 160.) And where relief is sought upon the ground that an assessment is fraudulently excessive the plaintiff must not only allege actual fraud, or that the assessment is so grossly excessive as to be constructively fraudulent, but he is required also to show that he has been diligent in pursuing his remedy to have the assessment corrected by the board of review or that he was prevented from pursuing that remedy by fraud, accident or mistake. (*Bistor* v. *McDonough*, 348 Ill. 624; *6922 Jeffery Apartment Building Corp.* v. *Harding*, 347 Ill. 336; *Kinderman* v. *Harding*, 345 Ill. 237; *People ex rel. Harding* v. *Hart*, 332 Ill. 467.) Should the board of review neglect or refuse to act upon a complaint of an alleged fraudulent assessment of taxable property, the owner's remedy is *mandamus* to compel the board to act, and the fact that the property owner believes that he will be unable to procure a writ of *mandamus* to compel the board to review his alleged fraudulent assessment before he will be compelled to pay the tax does not afford an excuse for failing to apply for the writ and seeking to enjoin the tax in the first instance. *People ex rel. McDonough* v. *Schmuhl*, 359 Ill. 446; *People ex rel. McDonough* v. *Reinecke*, 354 Ill. 351; *People ex rel. Mc-*

Donough v. *Cesar* 349 Ill. 372; *Bistor v. McDonough,* 348 Ill. 624; *New Haven Clock Co.* v. *Kochersperger,* 175 Ill. 383.

Authority to levy the taxes here in question is not challenged, and there is no claim that the property is exempt. While it is alleged that the increased valuations placed upon plaintiffs' property by the board of review in 1951 were fraudulent, there is no allegation that the plaintiffs filed any complaints or objections with the board of review with respect to the assessment of their property for 1953 taxes.

Plaintiffs' basic contention is that the action of the board of review in increasing the valuations of all lake leasehold property in the township was void. It is first asserted the motion to dismiss admits the allegation that the property of plaintiffs and other lake leaseholders was originally assessed by the township assessor upon an equal and uniform basis with other property in the township. Since there are 4000 owners of real property in Woodside Township, only 400 of whom are lake leaseholders, it is said that there could have been no basis or justification for any increase by the board of appeals in the valuation of plaintiffs' property, and that the increased valuation fixed by the board makes the assessment of their property disproportionate to the assessment of other property and deprives them of due process and of equal protection of the law.

The board of appeals is authorized by section 108 of the Revenue Act (Ill. Rev. Stat. 1953, chap. 120, par. 589,) to: "(5) Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein if, in its opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reduc-

ing the amount thereof, in any township, or part thereof, or any portion of the county as may, in its opinion, be just, but the assessment of any class of property or of any township or part thereof, or any portion of the county, shall not be increased until the board shall have notified not less than fifty of the owners of such property in such township, or part thereof, or portion of the county of such proposed increase and given them, or any one representing them or other citizens of said territory, an opportunity to be heard." It appears from the complaint and the attached exhibits that the required notices were given, and that a hearing was had before the board. From the minutes of the hearing it appears that the board considered that the lake leasehold properties and the improvements thereon "were not assessed on any basis comparable with any other property in the City [of Springfield] or County."

In our opinion the contention of the plaintiffs cannot be sustained. The property with which the board of appeals was concerned is unique both physically and legally. It borders on the lake, and it is occupied under long term leases from the city of Springfield. It seems clearly to be a separate "class of property" within the meaning of the statute. The statute contemplates that the assessment returned by the assessor may not be made upon the proper basis and for that reason authorizes the board to revise it. Similar provisions for revision of the assessments made by township assessors by a board of review or some like agency are familiar. (*People* v. *Southwestern Bell Telephone Co.*, 377 Ill. 303; *People ex rel. Little* v. *St. Louis Merchants Bridge Co.*, 291 Ill. 95; *American Express Co.* v. *Raymond*, 189 Ill. 232.) The board of review is not required to hear evidence in order to revise assessments, but may act on its own knowledge. (*People ex rel. Bracher* v. *Millard*, 307 Ill. 556; *People* v. *St. Louis Mer-*

chants Bridge Co., 291 Ill. 95; *Earle & Wilson* v. *Raymond*, 188 Ill. 15.) To hold that equity jurisdiction can be invoked by a complaint which asserts only the conclusion of the taxpayer that the original assessment returned by the township assessor was uniform, would negative the responsibility which the statute places upon the board of review to achieve uniform assessments by increasing or reducing "the assessment of any class of property." Furthermore, in this complaint, the allegation of the uniformity of the original assessment is qualified, if not negatived by a subsequent allegation that the assessor fixed the land valuations of lake leasehold property at "the nearest ten dollars of the first annual rental."

Apparently the plaintiffs paid their 1951 and 1952 taxes. From their complaint it affirmatively appears that they did not pursue their statutory remedy to have their 1953 assessments corrected by the board of review and that they were not prevented from so doing by fraud, accident or mistake. They do not allege that they filed either complaints or objections with the board of review with respect to the assessment for the year 1953. They do allege that on July 22, 1953, they presented to the county judge a "petition to adjust property valuations." On July 22 the county judge wrote to the board of review suggesting that the board adopt and make public a comprehensive and uniform formula in accordance with which it would review assessments, but rejecting the plaintiffs' suggestion that he request the board to reassess their property at the 1951 assessor's figure. The judge's letter to the board did not satisfy plaintiffs, who then wrote to the board inquiring what action it proposed to take with respect to the 100 per cent increase in the assessed valuations of their properties. On September 26, 1953, the county judge informed plaintiffs and other lake leaseholders that the board had

agreed to revise all assessments of lake leasehold property, fixing the land value upon the basis originally used by the township assessor, and informing them further that they should submit notarized schedules to the board, supplying certain specific data concerning the improvements upon their property. The letter also stated that unless the data concerning improvements was furnished by October 20, 1953, it would be assumed that no revision was requested. Certainly this letter of the county judge constitutes neither a complaint by plaintiffs to the board, nor an admission binding upon the board.

Plaintiffs refused to supply the board with the information requested because "The filing of the schedule requested might be construed as a withdrawal of our request that the valuation upon the improvements be returned to the amounts fixed by the tax assessor in 1951." Plaintiffs have been consistent, but mistaken, in their position that the assessment made by the township assessor in 1951 was conclusive. They refused to furnish information to the board of review except on the assurance that the board would reduce the assessments to the amounts they insisted upon as the only proper amounts. Not only did plaintiffs fail to exhaust their remedy before the board, but they have precluded themselves from obtaining equitable relief by their own arbitrary conduct.

The decree of the circuit court of Sangamon County is reversed and the cause remanded, with directions to sustain defendants' motion to dismiss the complaint.

Reversed and remanded, with directions.

JUDGMENT APPEALED FROM

UNITED STATES OF AMERICA

STATE OF ILLINOIS, } SS.
SUPREME COURT }

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the eighth day of November in the year of our Lord, one thousand nine hundred and fifty-four, within and for the State of Illinois.

PRESENT: GEORGE W. BRISTOW, *Chief Justice*

Justice	Justice Joseph E. Daily
Justice Walter V. Schaefer	Justice Ralph L. Maxwell
Justice Harry B. Hershey	Justice Ray I. Klingbiel

Latham Castle, *Attorney General*

Harry G. Newman, *Marshal*

ATTEST: Earl Benjamin Searcy, *Clerk*

BE IT REMEMBERED, that, to-wit: on the 18th day of November, 1954, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had an entered of record, to-wit:

Earnest T. Budberg, *et al.*, Appellees	Appeal from Circuit Court
No. 33197 vs.	Sangamon County
The County of Sangamon, *et al.*, Appellants	1332-53
	Error to

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and

now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the decree aforesaid, there is manifest error.

THEREFORE, it is considered by the Court that for that error and others in the record and proceedings aforesaid the decree of the Circuit Court of Sangamon County in this behalf rendered, BE REVERSED, ANNULLED, SET ASIDE AND WHOLLY FOR NOTHING ESTEEMED, and this cause be remanded to the Circuit Court of Sangamon County with directions to sustain defendants' motion to dismiss the complaint.

And it is further considered by the Court that the said appellants recover of and from the said appellees costs by them in this behalf expended to be taxed, and that they have execution therefor.